

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 012764

64

ORIGIN L-01

INFO OCT-01 ISO-00 NEA-07 AF-04 SS-14 EB-03 INR-05 SP-02

/037 R

DRAFTED BY L/NEA:BKHUFFMAN:LAB

APPROVED BY NEA:ALATHERTON,JR.

L:MLEIGH

JUSTICE/ANTI-TRUST:JSIMS

EB/CBA:HWINTER

S:JCOVEY

S/S-O:P.JOHNSON

----- 025719

P 172343Z JAN 76

FM SECSTATE WASHDC

TO ALL NEAR EASTERN AND SOUTH ASIAN DIPLOMATIC POSTS PRIORITY

AMEMBASSY MOGADISCIO PRIORITY

AMEMBASSY NOUAKCHOTT PRIORITY

AMEMBASSY KHARTOUM PRIORITY

LIMITED OFFICIAL USE STATE 012764

STADIS////////////////////////////////

E.O. 11652: N/A

TAGS: ETRD, PFOR

SUBJECT: ANTI-TRUST SUIT AGAINST BECHTEL INITIATED BY
JUSTICE DEPARTMENT

REF.: STATE 11754

1. IN CONSIDERING WHETHER TO FILE ANTI-TRUST SUIT AGAINST
BECHTEL, JUSTICE SOLICITED DEPARTMENT'S VIEWS ON FOREIGN
POLICY IMPLICATIONS. SECRETARY ADVISED ATTORNEY GENERAL
THAT ACTION COULD HAVE --- CONSEQUENCES FOR U.S.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 012764

FOREIGN RELATIONS BUT ALSO MADE IT CLEAR THAT DECISION TO

FILE LAWSUIT RESTED WITH JUSTICE DEPARTMENT AS AGENCY
RESPONSIBLE FOR ENFORCEMENT OF FEDERAL LAW.

2. SINCE LAWSUIT HAS NOW BEEN FILED DESPITE OUR ESTIMATE
THAT IT COULD DAMAGE OUR FOREIGN RELATIONS, OUR JOB IS
TO TRY TO MINIMIZE ANY SUCH DAMAGE.

3. IN THIS REGARD, WE BELIEVE MOST IMPORTANT POINT TO
STRESS, IN RESPONSE TO HOST GOVERNMENT QUERIES, IS FACT
THAT THIS IS CIVIL SUIT (NOT CRIMINAL PROSECUTION) WHICH
SEEKS INJUNCTION AGAINST ALLEGED ENFORCEMENT OF SECONDARY
BOYCOTT BY BECHTEL AGAINST BLACKLISTED SUPPLIERS AND

SUBCONTRACTORS IN U.S. THOUGH U.S. POSITION ON BOYCOTT
IS WELL-KNOWN, THIS LAWSUIT DOES NOT CHALLENGE RIGHT OF
ANY OTHER STATE TO REGULATE COMMERCE WITHIN ITS BORDERS
OR DETERMINE WHICH PRODUCTS OR FIRMS CAN ENTER IT.
RELIEF REQUESTED IN COMPLAINT WOULD NOT APPEAR TO BAR
BECHTEL FROM PARTICIPATING IN PROJECT IN ANOTHER STATE
FROM WHICH OTHER FIRMS OR THEIR PRODUCTS HAD BEEN
EXCLUDED ON POLITICAL CRITERIA, PROVIDED BECHTEL HAD
NOT ACTED AS AN INSTRUMENT FOR ENFORCEMENT OF BOYCOTT
AGAINST THEM BY COMPLYING WITH SECONDARY BOYCOTT CLAUSE
IN CONTRACT. WE HOPE THAT HOST GOVERNMENTS WILL
APPRECIATE OUR RIGHT TO REGULATE COMMERCE WITHIN THE
UNITED STATES, CONSISTENT WITH LONG-STANDING U.S. LAWS,
JUST AS THEY POSSESS SOVEREIGN POWER TO CONTROL COMMERCE
ACROSS AND WITHIN THEIR BORDERS.

4. IN EFFORT TO COUNTER MISINTERPRETATIONS OF LAWSUIT,
POSTS
SHOULD REPLY ALONG FOLLOWING LINES. THE RECENT GROWTH
IN TRADE AND INVESTMENT OPPORTUNITIES FOR AMERICAN FIRMS
IN THE ARAB WORLD--WHICH WE WELCOME STRONGLY--HAS BROUGHT
INCREASED ATTENTION TO THE ARAB BOYCOTT OF ISRAEL.
INVESTIGATIONS HAVE BROUGHT TO LIGHT INDICATIONS THAT
SOME U.S. FIRMS HAVE CARRIED OUT AGREEMENTS WITH ARAB
GOVERNMENTS UNDER WHICH THE AMERICAN FIRMS THEMSELVES
HAVE ACTED AS INSTRUMENTS FOR ENFORCING THE SECONDARY
BOYCOTT BY EXCLUDING BLACKLISTED AMERICAN SUB-CONTRACTORS
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 012764

OR SUPPLIERS FROM TRANSACTIONS. SINCE 1890, THE SHERMAN
ANTI-TRUST ACT HAS PROHIBITED COMBINATIONS OR CONTRACTS
WHICH UNREASONABLY RESTRAIN COMPETITION IN COMMERCE IN
THE U.S. THOUGH APPLICATION OF THE ACT IN THIS CASE
PRESENTS A NUMBER OF COMPLEX AND TECHNICAL LEGAL ISSUES,
JUSTICE DEPARTMENT IS OF THE VIEW THAT U.S. LAW AT
LEAST PROHIBITS AMERICAN FIRMS FROM BEING AN ENFORCING
INSTRUMENT FOR THE BOYCOTT IN THE U.S.

5. ABOVE-NOTED COMPLEX AND TECHNICAL ISSUES STEM FROM ALLEGATION THAT BECHTEL'S ACTIONS, THOUGH THEY OCCURRED WITHIN U.S., WERE STIMULATED BY LAWS AND ACTS OF OTHER SOVEREIGN STATES. SHOULD BECHTEL, AS REPORTED IN PRESS, RESIST LAWSUIT VIGOROUSLY, WE BELIEVE SEVERAL YEARS COULD ELAPSE BEFORE CASE WAS FINALLY DECIDED. RESULT OF SUCH LITIGATION IS BY NO MEANS CERTAIN. POSSIBLE ALTERNATIVE, WHICH IS COMMONPLACE IN CIVIL ANTI-TRUST SUITS BY JUSTICE, IS FOR DEFENDANT AND JUSTICE TO AGREE TO CONSENT ORDER CONTAINING INJUNCTION. THIS WOULD DISPOSE OF CASE WITHOUT FURTHER LITIGATION.

6. WE PRESUME THERE IS PROSPECT FOR SIMILAR SUITS AGAINST OTHER U.S. FIRMS THOUGH STATE DEPARTMENT IS NOT AWARE OF ANY SUCH PLANS AT THIS TIME. IT IS ALSO POSSIBLE THAT PRIVATE FIRMS ALLEGEDLY EXCLUDED BY BECHTEL OR OTHER FIRMS FROM PARTICIPATING IN PROJECTS SUBJECT TO BOYCOTT MAY NOW COMMENCE CIVIL SUITS SEEKING TREBLE DAMAGES AGAINST BECHTEL UNDER ANTI-TRUST LAWS.

7. WE HOPE HOST GOVERNMENTS WILL VIEW THIS AS A PROBLEM ARISING FROM A POSSIBLE CONFLICT OF LAWS WHICH MUST NOW BE RESOLVED BY THE COURTS. WE DO NOT BELIEVE THE RESOLUTION OF THESE ISSUES SHOULD BE PERMITTED TO IMPEDE OUR PURSUIT WITH HOST GOVERNMENT OF MUTUALLY BENEFICIAL ECONOMIC AND POLITICAL OBJECTIVES. KISSINGER

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ANTITRUST, LITIGATION, BUSINESS FIRMS, BOYCOTTS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 JAN 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE012764
Document Source: CORE
Document Unique ID: 00
Drafter: BKHUFFMAN:LAB
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760019-0169
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760146/aaaabopl.tel
Line Count: 142
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: STADIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: STADIS
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 25 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <25 JUN 2004 by ElyME>; APPROVED <25 JUN 2004 by morefirh>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ANTI-TRUST SUIT AGAINST BECHTEL INITIATED BY JUSTICE DEPARTMENT
TAGS: ETRD, PFOR, US, XF, BECHTEL
To: NEA POSTS MULTIPLE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006